Supreme Court, U.S.
FILED

03 789 JUL 23 2003

No. _____

In The

SUPREME COURT OF THE UNITED STATES

BETTIE J. PEPPERS

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE ARMY

Attorney Gerard A. Brost; Defendant

Respondent,

On Petition For Writ of Certiorari
To The United States District Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Bettie Peppers
211 Northbrook Ct.
Davenport, IA 52806
(563) 386-9185

36 pp

Questions Presented

1. When assessing whether the U.S. District Court's decision was based on an unreasonable request for irrelevant documents in light of the fact that the Judge himself stated, "Tax documents are only needed to prove loss of income." May a U.S. Court of Appeals ignore the unreasonableness of the process by which the U.S. District Court determined the facts?
2. Whether the U.S. District Court is required to ignore uncontested evidence of a pattern and practice of racial discrimination, and evidence of contemporaneous instances of discrimination?
3. Whether the court of appeals, through role reversal, incorrectly concluded that the plaintiff's tax documents were needed to examine the facts in this case?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW----------i

PETITION FOR WRIT OF CERTIORARI TO THE UNITED SUPREME COURT----------1

OPINIONS BELOW---------- 1

STATEMENT OF THE BASIS FOR JURISDICTION---------- ----------1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED----------2

STATEMENT OF THE CASE----------4

A. Basis for Federal Review in the First Instance -----4
B. History----------4
C. Material Facts----------5

REASONS FOR GRANTING THE WRIT----------15

CONCLUSION AND PRAYER----------16

TABLE OF AUTHORITIES

Page

CASES – DISPARATE TREATMENT

Heller v. Ebb Auto Co., 55 EPD p 40,431, 53 FEP Cases 911 (D.Or.1990)----------3

In Bessier v. Precise Tool & Engineering Co., Inc., 778 F.Supp. 1509, 57 FEP Cases 1249 (W.D.Mo.1991), ----------2

Dees v. Johnson Controls World Services, Inc., 168 F.3d 417, 422 (11th Cir. 1999) ----------6

Durham, 166F.3d at 152-53 Bryson v. Chicago State University, 96 F.3d 912, 917 (7th Cir. 1996) ----------6

STATUTES

The Civil Rights Acts of 1991
42 U.S.C. ----------5

Title VII of the Civil Rights Acts of 1964
42 U.S.C. $ 2000e-5(b)----------6

TABLE OF AUTHORITIES - Continued

MISCELLANEOUS

EEOC, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999)----------7

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B is unpublished.

STATEMENT OF THE BASIS FOR JURISDICTION

The date on which the United States Court of Appeals for the Seventh Circuit decided my case was April 28, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1)
The date on which the highest state court decided my case was October 24, 2002. A copy of that decision appears at Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a)

CONSTITUTIONAL PROVISIONS INVOLVED

The questions presented implicate the following provisions of the United States Constitution:

U.S. Const. amend. XIV

No State shall .....deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV

[N] or shall any State deprive any person of life, liberty, or property without due process of law.....

STATUTORY PROVISIONS INVOLVED

The questions presented implicate the following provisions of case law and the defendants' point of error: In Bessier v. Precise Tool & Engineering Co., Inc., 778 F. Supp. 1509, 57 FEP Cases 1249 (W.D.Mo.1991),

> In "Bessier v. Precise Tool & Engineering Co., Inc., 778 F. Supp. 1509, 57 FEP Cases 1249 (W.D.Mo.1991), the plaintiff was granted discovery of defendant's financial records (income tax returns) to prepare a case on the issue of punitive damages.

[A] determination of a factual issue made in the Bessier v. Precise Tool & Engineering Co., Inc., 778 F. Supp. 1509, 57 FEP cases 1249 (W.D.Mo.1991), case shall be presumed to be correct.

in determining punitive damages and not to be used in an attempt to put the Plaintiff on trial. And the Plaintiff isn't seeking compensation for punitive damages. In an attempt *at role reversal,* the defendant (U.S. Army) sought the plaintiff's tax records. The repeated requests from the U.S. Army for the plaintiff's irrelevant documents, i.e. tax records (role reversal) were used to deny due process and allow discriminatory practices to continue.

Heller v. Ebb Auto Co., 55 EPD p 40,431, 53 FEP Cases 911 (D.Or.1990)

> The defendant was also compelled to answer interrogatories as to its net worth in *Heller v. Ebb Auto Co., 55 EPD p 40,431, 53 FEP Cases 911 (D.Or.1990)* (Plaintiff may be entitled to defendant's profit and loss statements and balance statements after making a prima facie showing of entitlement to punitive damages).

[A] determination of a factual issue made in the *Heller v. Ebb Auto Co., 55 EPD p 40,431, 53 FEP Cases 911 (D.Or.1990)* case shall be presumed to be correct in determining punitive damages and not to be used as an attempt to put the Plaintiff on trial. And the plaintiff isn't seeking compensation for punitive damages. The repeated requests from the U.S. Army for the plaintiff's irrelevant documents, i.e. tax records (role reversal) were used to deny due process and allow discriminatory practices to continue.

STATEMENT OF THE CASE

A. Basis for Federal Review in the First Instance.

I have been discriminated against based on race and sex, denied developmental assignments, which are mandated by the Defense Acquisition Workforce Improvement Act, denied opportunity to do my job in accordance with my job description, harassed, performance appraisal lowered, and physically segregated from peers in the workplace.

B. History.

Shortly after graduation from the Material Maintenance Intern (Outstanding Scholar) Program I was transferred to the Mortar Team in the Field Artillery CBU on January 1997 as an ILS Manager. After realizing that I was being underutilized after classroom training, it was on 31 August 1999 when I began to ask management for an OJT plan that was in accordance with the Defense Acquisition Workforce Improvement Act (DAWIA) and Reform Through Learning Policy on Continuous Learning for the Defense Acquisition Workforce. I never received the OJT or developmental assignments that I requested.

On April 17, 2000, I was involuntarily transferred to the ERLS team where I continued to be underutilized and there was no work available that would develop my skills as an ILS Manager and apply what I had learned in recent Defense Acquisition University (DAU) classes.

On 16 November 2001, I received an e-mail message indicating that I would become a part of the Target Acquisition

Team and start work on the management of a new weapon system, the IPADS. I was relieved that I would finally get an opportunity to become an experienced ILS Manager and manage a weapon System from the "cradle to grave."

But it was on 19 December 2001, (43 days after the transfer to the Target Acquisition Team) when management, Legal, and CPAC decided that they would not allow an African American Female become an experienced ILS Manager in the Field Artillery- Product Support Integration Directorate (PSID).

It was during August 1999 when a member of Management told me that there was little opportunity to gain experience working on a new system, but when given the opportunity to work on a new system (the IPADS), management participates in a conspiracy to deny me an opportunity to gain the needed experience as an ILS Manager. Management later lowered my rating by adding false information in my FY 02 Performance Appraisal.

C. Material Facts.

CURRENT AND ONGOING HARRASSMENT [1]

To date, July 22, 2003, in a hostile work environment, of mental anguish, humiliation, embarrassment and stress; management has allowed the repeated infliction of emotional distress and slander while constantly calling me away from my desk for petty insignificant regular meetings where I have been

[1] The Civil Rights Acts of 1991; Sec. 2 [42 U.S.C. 1981 note]; Sec. 3 [42 U.S.C. 1981 note]; Title 1 – Federal Civil Rights Remedies

falsely accused, berated, humiliated, and yelled at in the presence of invited individuals, from other teams, and offices.

Management has given a nonsupervisory employee the authority to keep me in a hostile work environment of a two-person team environment where I continues to be isolated from peers, continues to be isolated from the Supportability Integrated Product Team, continues to be isolated from off-island peers, continues to be denied an opportunity to do my job[2], continues to be denied involvement in day-to-day work activities, continues to be denied on-the- job training[3], and continues to be denied developmental assignments. I have been yelled at and humiliated,[4] in the presence of the individuals from other offices and teams, instead.

I am denied an opportunity to do my job when, I am repeatedly excluded from meetings, my e-mail messages are deleted without being read, phone calls are routed/transferred to other individuals, my name is excluded from E-mail distribution lists, E-mail messages are sent to my peers, customers, and team of subject matter experts, encouraging them to ignore my e-mail messages, I am denied the tools, and resources, (Documents, software) that I needed to do my job in an efficient manner.

---

[2] (See Durham, 166F.3d at 152-53 Bryson v. Chicago State University, 96 F.3d 912, 917 (7th Cir. 1996) (Depriving someone of the building blocks for a promotion is just as serious as depriving her of the job itself.")

[3] Title VII of the Civil Rights Acts of 1964; 42 U.S.C. $ 2000e-5(b)

[4] See Dees v. Johnson Controls World Services, Inc., 168 F.3d 417, 422 (11th Cir. 1999) (employer can be held liable despite its immediate and appropriate corrective action in response to harassment complaint if it had knowledge of the harassment prior to the complaint and took no corrective action).

Repeatedly management has directed me to add a nonsupervisory and non-team leader employee to my peer evaluation list where it is only mandatory that I add my team leader and supervisor.

After the continual isolation from individuals and customers, management has also given a nonsupervisory employee the authority to cause a "Tangible Employment Action"[5] against me, by allowing her to provide false information in my peer evaluation and performance appraisal.

STATEMENT OF HARRASSMENT

Mr. Turke, stated to me and others, "……..the only reason some people aren't dead is because it is against the law to kill them." And the only reason ….. Bettie Peppers isn't dead is because it is against the law to kill them." (IF 140, paragraph 3)

EMAIL MESSAGE:

I was treated differently from similarly situated employee (Lisa Walter) not in my protected group when an e-mail message was sent out to cancel a briefing. I was referred to as not having the ability to do the presentation and answer questions. On the other hand, Ms. Walter (white female) was referred to as being very professional and willing to contribute (IF 177, second paragraph from bottom).

---

[5] (EEOC, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

I was qualified (IF page 156, last paragraph, IF 158, 160, and 161) and available to do the presentation and Mr. Turke was aware of that. The presentation was scheduled for December 16, 1999. (Fact Finding Page 43, line 20;IF page 177, 3rd paragraph) and the day of the e-mail message was November 22, 1999. This was ample time to prepare me to do the briefing just as he has prepared others to do briefings in the past (Fact Finding page 242, line 1-7).

Management has allowed Steve Turke to withhold necessary training where entire briefings have to be cancelled, when he does not attend. I had been on the team since January 1998. (IF 120) This was an adverse employment decision when Mr. Turke sent this e-mail message out because the recipients of this message no longer wanted to talk to me when they called from New Jersey.

Management upheld Mr. Turke in his discriminatory e-mail message about my ability. (Fact Finding Page 178, line 11- 13). It is not in the "best interest of the agency" to support the discriminatory practices in the workplace committed against me by Steve Turke. Mr. Turke sent out a message of libel with intent to discriminate on November 22, 1999 when he compared me to the white female in the office. She was referred to as very professional and I, on the other hand, was referred to as not having the ability to do the presentation and answer questions. Libel is a crime.

The e-mail message was written with reckless disregard as to its falsity. Mr. Turke's intent to harm was very obvious because he carefully listed the other team member's name, made excuses for them, or said something positive about them. But when he got to me, instead of listing my name he resorted

to---------- "The remaining two employees just don't have the ability to do the presentation and answer questions. (IF page 177, last paragraph) Through the process of elimination and the recipient's list of names, it was obvious that "the remaining two" included me.

This defamatory statement proved to be false because my extensive training prepared me to do presentations. I have done several presentations as an undergraduate student, graduate student, during internship, and during officer basic training. (IF page 156, last paragraph. IF 158, 160, and 161.)

It is not standard procedure to cancel a briefing by naming individuals on a team as Mr. Turke did. This employment practice is both unprofessional and discriminatory and should not be tolerated in the Army.

The defamatory statement has injured my reputation as an employee in more ways than one, with my peers in the CBU and the New Jersey employees. After this e-mail message of libel was sent:

(a). I was treated different by the employees in New Jersey and on my team. The New Jersey employees no longer e-mailed or called me. When I answered the phone and asked them if I could help, they would ask to speak with someone else in the office.

(b). This defamatory statement lowered my status as a person.

(c). The libelous words cost me the loss of my reputation as an ILS Manager.

(d). My potential for cash awards has been hindered because cash awards are originated from the New Jersey's PM office. One of the recipients of the e-mail message oversees the cash awards.

According to the law of defamation, I have a right to have my reputation protected against false statements made against me.

Steve only prepares and trains certain individuals to do those briefings and his e-mail message proved he had no intentions of training me because he felt I did not have the ability to do the presentation. Others feared doing the briefing. (Fact-finding page 211, line 21-25) I, on the other hand, had no fear of doing briefings because I had been trained to do briefings. As indicated in the fact-finding conference (page 242, line 1-7) he gave other team members an opportunity to prepare for the briefing several days ahead of time and he could have done the same for me.

Mr. Turke referred to Jeff Connell in the November 22, e-mail message in an attempt to disguise his intent to discriminate with malice against me when he compared me to the white female in the office. It further proves that he carefully planned prior to committing this discriminatory act. This would explain why he (twice) referred to Mr. Jeff Connell and me in the same sentence. (IF page 177, last paragraph and IF 140, paragraph 3) His intent was to harm me because it is obvious that he and Jeff Connell have had previous disagreements since he used (Jeff Connell, white male) in the same sentence with me (black female). (I proved the agency's e-mail message about my ability to be false.)

EMPLOYEE ASSISTANCE PROGRAM (EAP) MEETINGS

I was treated differently from similarly situated employee (Lisa Walter) not in my protected group when I was denied the opportunity to meet and talk freely in the EAP communication and conflict resolution team training with my team members. On February 3, February 14, 2000, and March 21, 2000.

The first meeting on January 4, was an attempt to get me to discuss the specifics of my EEO complaint and I refused to discuss my EEO complaint. I was singled out and asked specific questions about my ability and willingness to do a presentation. (IF page 47, paragraph 3) This was not only a repeated violation of my civil rights but also indicated that management talked to the EAP office about the specifics of my EEO complaint. I refused to talk about the complaint but agreed to answer questions that they wanted to ask me. (Fact Finding Page 247, lines 14 –17) and that there was no need to meet one-on-one, but I was told I needed to meet one-on-one anyway. (IF page 47, paragraph 4) Others were coerced into agreeing to the meetings, (Fact Finding, Page 238, lines 23-25; Page 236, lines 17-19)

The February 14, group meeting was canceled and I was asked to meet alone with Management and EAP representative. During the meeting, I was informed that the team members no longer wanted to meet with me because they felt as if they were walking on eggshells. (IF Page 141, lines 7-10) Ex-pâté communication had taken place. It was stated that the meetings was to help the team, (Fact Finding page 181, lines 1-4). I was a part of the team, why were the meetings held without me? (I proved the agency's reason to be false.)

After the series of EAP meetings, a hostile environment had been created in the entire CBU. (Fact finding statement Page 185, lines 7-10) On March 15, 2000, I received an e-mail message stating, "Several issues are being addressed by management and they are aware of everyone's concern." On April 17, I was asked to leave the team, which proves management used the EAP office in their attempt to justify transferring me (Fact Finding Transcript page, 164, line 8-11).

INVOLUNTARY TRANSFER

I was treated differently from similarly situated employee (Barb) not in my protected group when I was moved to another team and a significant change in my duties. (Fact Finding page 253, line 24-25 and page 254, line 1-4) There was not a significant change in Barb's duties.

My EEO complaint was ongoing and still in the formal stages of the complaint process when I was involuntarily transferred.

Mr. Doyle Reynolds made a false statement under oath when he stated, "And she followed up with an e-mail message that indicated that yes, she would move." (Fact Finding Transcript page 165, page 9-10) This is not a true statement. (Exhibit 11, line 1)

My move to the ERLS team was an act of unlawful retaliation and an adverse employment decision. It shows the continued pattern of disparate treatment in the organization. I have been adversely impacted as follows:

(a) Placed on a team of two team members, now one, where I will not have an opportunity to progress to the next

promotion level. I am a GS 11 and the other member is a GS 13. (Fact Finding 169, line 3).

(b) I will no longer have an opportunity to work on a weapon system or a support weapon system, which will foster my development as an Integrated Logistics Support (ILS) manager. There was a significant change in my duties. (Fact Finding Page 266, line 2-14) I was taken from managing an XM30 Computer to a kit. Mr. Jerome Nathan, who was the former manager relating to the ERLS team stated, " She's correct in saying that it goes from something that was relatively complex, XM30 mortar ballistic computer, to something that's more or less a flashlight kit." (Fact Finding Page 88, lines 9-13)

(c) The team is of lower status (one person and unfunded) (Fact Finding Page 170, lines 17,18). These facts subject me to future reductions in forces (RIF).

In Mr. Doyle Reynolds' sworn statements, the move was due to three reasons (page 163, lines 12-15, lines 16-18, Page 164, lines ll-12)

First Reason - It was due to the workload on the ERLS team (Fact Finding 168, lines 24,25) Mr. Don Erickson stated a few days after I was transferred to the team that there is no workload (Fact Finding Page 263 line 24, 25 and Page 264 lines 1-3) and also recently, Ms. Lin Hirst, the team leader at the time, stated she was tired of coming to work and not having anything to do. (I proved the agency's reason to be false.)

Second Reason - There was a decrease in the workload on Mortar team (Fact Finding Page 163, line 12-15). According

to a Mortar team member on June 20, 2000, they are very busy on the Mortar team. (Fact Finding page 240, lines 12). Mr. Hagglund also indicated that the XM30 program that I was working on had gotten stalled, not canceled. Fact Finding page 234, lines 7) I never received official notification that the program had been canceled. (Exhibit 12) Mr. Hagglund will have first hand knowledge about the program being stalled because he is in charge of the technical manual for the XM30 program. There was also other work that was ongoing that Steve could have shared with me. (Exhibit 11), but as he indicated during the fact finding conference, he had no intention of sharing the work because that was his work. (Fact Finding page 58, lines 4-6) (I proved the agency's reason to be false.)

Third Reason - According to Doyle's statement, "The relationship between Bettie and Steve was affecting the team." (Transcript, page 164, line 8-11) According to the team members' testimonies, they indicated that I was a pleasant person on the team, in spite of the EEO Complaint. Fact Finding conference page 225, line 1-4; page 248, line 17-20; page 233, lines 21-24; page 208 lines 17-19, page 199, page 199, lines 8-11). Even Mr. Turke admitted that I was a pleasant employee on the team (Fact Finding page 70, line 16-18) (I proved the agency's reason to be false.)

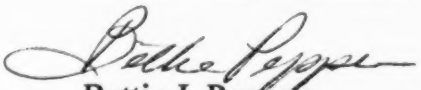
REASONS FOR GRANTING THE PETITION

This court should grant certiorari and decide whether courts must consider compelling evidence of a pattern and practice of ongoing racial discrimination. And under Equal Protection jurisprudence, an overwhelming prima facie case of discrimination remains relevant to a court's assessment based on the strong evidence of the case.

CONCLUSION AND PRAYER

Ms. Bettie Peppers respectfully request that the Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,



Bettie J. Peppers
211 Northbrook Ct.
Davenport, IA 52806
(563) 386-9185